

**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANT:

**LEANNE WEISSMANN**  
Lawrenceburg, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**CYNTHIA L. PLOUGHE**  
Deputy Attorney General  
Indianapolis, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

THERON W. HUNTER,  
 Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

$$\begin{array}{c} ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \end{array}$$

No. 69A01-0702-CR-61

APPEAL FROM THE RIPLEY CIRCUIT COURT  
The Honorable Carl H. Taul, Judge  
Cause No. 69C01-9912-CF-43

**June 21, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Theron Hunter (Hunter), appeals the trial court's revocation of his probation and imposition of his suspended sentence.

We affirm.

## ISSUES

Hunter raises two issues on appeal, which we restate as follows:

- (1) Whether the evidence was sufficient to revoke Hunter's probation; and
- (2) Whether the trial court appropriately imposed Hunter's four year suspended sentence.

## FACTS AND PROCEDURAL HISTORY

On December 3, 1999, the State filed an Information charging Hunter with two Counts of child molesting as Class C felonies. The two Counts were subsequently severed and on November 2, 2000, a jury found Hunter guilty of Count I, child molesting, a Class C felony. On December 1, 2000, the trial court sentenced Hunter to eight years on Count I. April 4, 2001, Hunter entered a plea of guilty to Count II, child molesting, a Class C felony. On May 8, 2001, the trial court accepted Hunter's plea and sentenced him to eight years with four years suspended to probation. On July 7, 2006, Hunter was released from incarceration and placed on probation. Upon being released, the terms and conditions of probation were discussed with Hunter. One of the conditions was that he was "never [to] be alone with or have contact with any person under the age of [eighteen:]" "contact includes face-to-face, telephonic, written, electronic, or any indirect contact via third parties." (Appellant's App. pp. 18, 28). Additionally, the

probation conditions required that any incidental contact with persons under the age of eighteen be reported to his probation officer within twenty-four hours.

Upon being released on probation, Hunter moved in with his father. Shortly thereafter Hunter bought a trailer, placed it on his father's land, and lived there. Hunter's sister lived in a trailer on an adjacent piece of her father's property some fifteen to twenty-five feet away from Hunter's trailer. She lived with her husband and three children; the children ranged in age from fourteen to eighteen.

Hunter informed everyone, including his sister, that he was not supposed to be around the children. However, upon Hunter's initial release in July 2006, he worked construction a few days with his father and nephew. When he told his probation officer about the arrangement, the probation officer said "that would have to be discontinued" due to the age of Hunter's nephew. As soon as his nephew went back to school Hunter began working construction for his father in the mornings and working on his sister's trailer in the afternoons. Hunter admits there were days when he was in the trailer when the children returned from school. Hunter packed up and left when the children came inside, but he also knew he was not supposed to have any contact with the children. Hunter never informed his probation officer he came into contact with the children.

On October 6, 2006, a probation violation was filed against Hunter. A hearing was held January 10, 2007. The trial court found Hunter violated his probation, revoked Hunter's suspended sentence, and ordered him to serve his entire four-year suspended sentence.

Hunter now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### *I. Sufficiency of the Evidence*

Hunter first contends there was insufficient evidence to revoke his probation. Specifically, he contends the State failed to show by a preponderance of the evidence that improper contact occurred between Hunter and any minor children.

Probation revocation proceedings are civil in nature. *Thornton v. State*, 792 N.E.2d 94, 96 (Ind. Ct. App. 2003). Accordingly, the State must prove a violation of probation by a preponderance of the evidence. I.C. § 35-38-2-3(e); *id.* When reviewing a challenge to the sufficiency of the evidence supporting probation revocation, we apply the same standard used to determine any other sufficiency question. *Sutton v. State*, 689 N.E.2d 452, 454 (Ind. Ct. App. 1997), *reh'g denied*. We will not reweigh the evidence or assess the credibility of the witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028-29 (Ind. Ct. App. 2002). We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Alspach v. State*, 755 N.E.2d 209, 210 (Ind. Ct. App. 2001), *trans. denied*.

Hunter argues he did not communicate with the minor children as defined in *Wright v. State*, 688 N.E.2d 224 (Ind. Ct. App. 1997) (communication means “establishing of communication with someone” or “to get in communication with.” WEBSTER'S DICTIONARY 249 (10th ed.1993)). We note, however, that in *Wright* the State sought revocation of probation based on the defendant’s alleged violation of a no-contact order. Here, the State is seeking revocation based not on Hunter’s *communicating* with minor children, rather the State is seeking revocation based on

Hunter's prohibited *contact* with minor children. Contact, as it was meant to apply in this situation, is defined in the probation conditions Hunter signed as "face-to-face, telephonic, written, electronic, or any indirect contact via third parties." (Appellant's App. pp. 18, 28).

The record indicates Hunter admits to having contact with the children. Sometimes he was still in the trailer when the children arrived home from school. He claims that it was always his intent to be out of the trailer when the children arrived home, and the times he was still in the trailer when the children arrived, he testified he "didn't sit down with them. [He] didn't talk to them. [He] didn't have anything to do with them as far as wrestlin' around, playing with them, nothing at all." (Tr. pp. 23-24). Rather, "[a]s soon as [the children] came in, as fast as [he] could, [he] would pack up his tools and get out the door until the next day." (Tr. p. 24).

The evidence presented at the probation revocation hearing establishes, in part through Hunter's own admission, that Hunter came into contact with the children multiple times and failed to notify his probation officer within twenty-four hours. Thus, we conclude there was sufficient evidence to support revocation of Hunter's probation.

## II. *Imposition of Suspended Sentence*

Next, Hunter argues the trial court abused its discretion by ordering him to serve his entire four year suspended sentence. Hunter claims the nature and circumstances of his probation violation did not rise to the level of severity necessitating the imposition of his entire suspended sentence.

We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956-57 (Ind. Ct. App. 2005). Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment. *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App 2005). These restrictions are designed to ensure that the probation serves as a period of genuine rehabilitation and that a probationer living within the community does not harm the public. *Id.* Moreover, as we have noted on numerous occasions, a defendant is not entitled to serve a sentence in a probation program; rather, such placement is a “matter of grace” and a “conditional liberty that is a favor, not a right.” *Id.*

Here, Hunter admits to violating his probation, but nonetheless argues the trial court abused its discretion in ordering him to serve his entire suspended sentence. Hunter submits ordering a portion of his suspended sentence would be more appropriate. Hunter claims “[a]t the most, a mistake was made.” (Appellant's Br. p. 10). Due to Hunter's child molesting convictions leading to his probation, and the fact that this violation is directly related to children – improper contact with children – it was not an abuse of discretion for the trial court to require that Hunter serve his entire four-year suspended sentence.

### CONCLUSION

Based on the foregoing, we find the evidence was sufficient to revoke Hunter's probation and the trial court appropriately imposed Hunter's four-year suspended sentence.

Affirmed.

NAJAM, J., and BARNES, J., concur.